

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Steven Kleinfeld

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9 CONSUMER ADVOCACY GROUP, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

12 CONSUMER ADVOCACY GROUP, INC.,
13 in the public interest,

14 Plaintiff,

15 v.

16 CALI FOODS MARKET, INC. dba CALI
17 MART, a California Corporation;
18 KIM SENG COMPANY, INC., a California
19 Corporation;
20 and DOES 1-20,

21 Defendants.

CASE NO. 19STCV37537

COMPLAINT FOR PENALTY AND
INJUNCTION

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act of 1986 (*Health & Safety Code*, §
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$25,000)

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action against
2 Defendants CALI FOODS MARKET, INC. dba CALI MART, KIM SENG COMPANY, INC.,
3 and DOES 1-20 as follows:

4 **THE PARTIES**

- 5 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
6 organization qualified to do business in the State of California. CAG is a person within
7 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
8 as a private attorney general, brings this action in the public interest as defined under
9 Health and Safety Code section 25249.7, subdivision (d).
- 10 2. Defendant CALI FOODS MARKET, INC. dba CALI MART ("CALI FOODS") is a
11 California Corporation qualified to do business and doing business in the State of
12 California at all relevant times herein.
- 13 3. Defendant KIM SENG COMPANY, INC. ("KIM SENG") is a California Corporation
14 qualified to do business and doing business in the State of California at all relevant times
15 herein.
- 16 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
17 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
18 Complaint to allege their true names and capacities when ascertained. Plaintiff is
19 informed, believes, and thereon alleges that each fictitiously named defendant is
20 responsible in some manner for the occurrences herein alleged and the damages caused
21 thereby.
- 22 5. At all times mentioned herein, the term "Defendants" includes CALI FOODS, KIM
23 SENG, and DOES 1-20.
- 24 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
25 times mentioned herein have conducted business within the State of California.
- 26 7. Upon information and belief, at all times relevant to this action, each of the Defendants,
27 including DOES 1-20, was an agent, servant, or employee of each of the other
28

1 Defendants. Specifically, KIM SENG is the manufacturing supplier to CALI FOODS of
2 the Product subject to this Complaint. In conducting the activities alleged in this
3 Complaint, each of the Defendants was acting within the course and scope of this agency,
4 service, or employment, and was acting with the consent, permission, and authorization
5 of each of the other Defendants. All actions of each of the Defendants alleged in this
6 Complaint were ratified and approved by every other Defendant or their officers or
7 managing agents. Alternatively, each of the Defendants aided, conspired with and/or
8 facilitated the alleged wrongful conduct of each of the other Defendants.

- 9 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
10 Defendants was a person doing business within the meaning of Health and Safety Code
11 Section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
12 employees at all relevant times.

13 JURISDICTION

- 14 9. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
15 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
16 those given by statute to other trial courts. This Court has jurisdiction over this action
17 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
18 violations of Proposition 65 in any Court of competent jurisdiction.
- 19 10. This Court has jurisdiction over Defendants named herein because Defendants either
20 reside or are located in this State or are foreign corporations authorized to do business in
21 California, are registered with the California Secretary of State, or who do sufficient
22 business in California, have sufficient minimum contacts with California, or otherwise
23 intentionally avail themselves of the markets within California through their manufacture,
24 distribution, promotion, marketing, or sale of their products within California to render
25 the exercise of jurisdiction by the California courts permissible under traditional notions
26 of fair play and substantial justice.

1 11. Venue is proper in the County of Los Angeles because one or more of the instances of
2 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
3 because Defendants conducted, and continue to conduct, business in the County of Los
4 Angeles with respect to the consumer product that is the subject of this action.

5 **BACKGROUND AND PRELIMINARY FACTS**

6 12. In 1986, California voters approved an initiative to address growing concerns about
7 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
8 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
9 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
10 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
11 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
12 from contamination, to allow consumers to make informed choices about the products
13 they buy, and to enable persons to protect themselves from toxic chemicals as they see
14 fit.

15 13. Proposition 65 requires the Governor of California to publish a list of chemicals known to
16 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
17 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
18 chemicals and chemical families. Proposition 65 imposes warning requirements and
19 other controls that apply to Proposition 65-listed chemicals.

20 14. All businesses with ten (10) or more employees that operate or sell products in California
21 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
22 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
23 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and
24 reasonable” warnings before exposing a person, knowingly and intentionally, to a
25 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

26 15. Proposition 65 provides that any person “violating or threatening to violate” the statute
27 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
28

1 "Threaten to violate" means "to create a condition in which there is a substantial
2 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
3 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
4 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

5 16. Plaintiff identified certain practices of manufacturers and distributors of seaweed of
6 exposing, knowingly and intentionally, persons in California to bearing Lead and Lead
7 Compounds ("LEAD") and Cadmium and Cadmium Compounds ("CADMIUM")
8 without first providing clear and reasonable warnings of such to the exposed persons
9 prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such
10 practice.

11 17. On October 1, 1992, the Governor of California added Lead and Lead Compounds
12 ("LEAD") to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.*
13 tit. 27, § 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10,
14 twenty (20) months after addition of LEAD to the list of chemicals known to the State to
15 cause cancer, LEAD became fully subject to Proposition 65 warning requirements and
16 discharge prohibitions.

17 18. On October 1, 1987, the Governor of California added Cadmium and Cadmium
18 Compounds ("CADMIUM") to the list of chemicals known to the State to cause cancer
19 (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code sections
20 25249.9 and 25249.10, twenty (20) months after addition of CADMIUM to the list of
21 chemicals known to the State to cause cancer, CADMIUM became fully subject to
22 Proposition 65 warning requirements and discharge prohibitions.

23 19. On Feb. 27, 1987, the Governor of California added LEAD to the list of chemicals known
24 to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.* tit. 27, §
25 27001(c)). LEAD is known to the State to cause developmental, female, and male
26 reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and
27 25249.10, twenty (20) months after addition of LEAD to the list of chemicals known to
28

1 the State to cause reproductive toxicity, LEAD became fully subject to Proposition 65
2 warning requirements and discharge prohibitions.

- 3 20. On May 1, 1997 the Governor of California added CADMIUM to the list of chemicals
4 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs. tit.*
5 *27, § 27001(c)*). Lead is known to the State to cause developmental, and male
6 reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and
7 25249.10, twenty (20) months after addition of CADMIUM to the list of chemicals
8 known to the State to cause reproductive toxicity, CADMIUM became fully subject to
9 Proposition 65 warning requirements and discharge prohibitions.

10 **SATISFACTION OF PRIOR NOTICE**

- 11 21. On or about July 2, 2019 Plaintiff gave notice (AG2019-01265) of alleged violations of
12 Health and Safety Code Section 25249.6, concerning consumer products exposures
13 subject to a private action to CALI FOODS, KIM SENG, and to the California Attorney
14 General, County District Attorneys, and City Attorneys for each city containing a
15 population of at least 750,000 people in whose jurisdictions the violations allegedly
16 occurred, concerning seaweed containing LEAD and CADMIUM.
- 17 22. On or about July 2, 2019 Plaintiff gave notice (AG2019-01269) of alleged violations of
18 Health and Safety Code Section 25249.6, concerning consumer products exposures
19 subject to a private action to CALI FOODS, KIM SENG, and to the California Attorney
20 General, County District Attorneys, and City Attorneys for each city containing a
21 population of at least 750,000 people in whose jurisdictions the violations allegedly
22 occurred, concerning seaweed containing LEAD and CADMIUM.
- 23 23. Before sending the notices of alleged violation, Plaintiff investigated the consumer
24 products involved, the likelihood that such products would cause users to suffer
25 significant exposures to LEAD and CADMIUM, and the corporate structure of each of
26 the Defendants.

1 24. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
2 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
3 Plaintiff who executed the certificate had consulted with at least one person with relevant
4 and appropriate expertise who reviewed data regarding the exposures to LEAD and
5 CADMIUM, the subject Proposition 65-listed chemical of this action. Based on that
6 information, the attorney for Plaintiff who executed the Certificate of Merit believed
7 there was a reasonable and meritorious case for this private action. The attorney for
8 Plaintiff attached to the Certificate of Merit served on the Attorney General the
9 confidential factual information sufficient to establish the basis of the Certificate of
10 Merit.

11 25. Plaintiff's notice of alleged violations also included a Certificate of Service and a
12 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
13 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

14 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
15 gave notices of the alleged violations to CALI FOODS, KIM SENG, and the public
16 prosecutors referenced in Paragraphs 21 and 22.

17 27. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
18 any applicable district attorney or city attorney has commenced and is diligently
19 prosecuting an action against the Defendants.

20 FIRST CAUSE OF ACTION

21 (By CONSUMER ADVOCACY GROUP, INC. and against CALI FOODS, KIM SENG,
22 and DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic
23 Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

24 Seaweed I

25 28. Plaintiff repeats and incorporates by reference paragraphs 1 through 27 of this complaint
26 as though fully set forth herein.

27 29. Each of the Defendants are, and at all times mentioned herein was, a manufacturer,
28 distributor, promoter, or retailer of Dried Seaweed Slice, which includes "Heng Lung
Brand;" "DRIED SEAWEED SLICE;" "NET WT: 7 OZ (200g);" "DISTRIBUTOR: IHA

1 BEVERAGE COMMERCE, CA 90040;" "PRODUCT OF CHINA;" "6 10232 00673 4"
2 ("DRIED SEAWEED SLICE").

3 30. DRIED SEAWEED SLICE contains LEAD and CADMIUM.

4 31. Defendants knew or should have known that LEAD and CADMIUM has been identified
5 by the State of California as a chemical known to cause cancer and reproductive toxicity
6 and therefore was subject to Proposition 65 warning requirements. Defendants were also
7 informed of the presence of LEAD and CADMIUM in DRIED SEAWEED SLICE
8 within Plaintiff's notice of alleged violations further discussed above at Paragraph 21.

9 32. Plaintiff's allegations regarding DRIED SEAWEED SLICE concern "[c]onsumer
10 products exposure[s]," which "is an exposure that results from a person's acquisition,
11 purchase, storage, consumption, or other reasonably foreseeable use of a consumer good,
12 or any exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27,
13 § 25602(b). DRIED SEAWEED SLICE are consumer products, and, as mentioned
14 herein, exposures to LEAD and CADMIUM took place as a result of such normal and
15 foreseeable consumption and use.

16 33. Plaintiff is informed, believes, and thereon alleges that between July 2, 2016, and the
17 present, each of the Defendants knowingly and intentionally exposed California
18 consumers and users of DRIED SEAWEED SLICE, which Defendants manufactured,
19 distributed, or sold as mentioned above, to LEAD and CADMIUM, without first
20 providing any type of clear and reasonable warning of such to the exposed persons before
21 the time of exposure. Defendants have distributed and sold DRIED SEAWEED SLICE
22 in California. Defendants know and intend that California consumers will use and
23 consume DRIED SEAWEED SLICE, thereby exposing them to LEAD and CADMIUM.
24 Defendants thereby violated Proposition 65.

25 34. The principal routes of exposure are and were through including hand to
26 mouth pathways, inhalation, and trans-dermal absorption.. Persons sustain exposures
27 primarily by eating and consuming DRIED SEAWEED SLICE, and additionally by
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1 handling DRIED SEAWEED SLICE without wearing gloves or any other personal
2 protective equipment, or by touching bare skin or mucous membranes with gloves after
3 handling DRIED SEAWEED SLICE, as well as through direct and indirect hand to
4 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed
5 from DRIED SEAWEED SLICE.

6 35. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
7 Proposition 65 as to DRIED SEAWEED SLICE have been ongoing and continuous, as
8 Defendants engaged and continue to engage in conduct which violates Health and Safety
9 Code Section 25249.6, including the manufacture, distribution, promotion, and sale of
10 DRIED SEAWEED SLICE, so that a separate and distinct violation of Proposition 65
11 occurred each and every time a person was exposed to LEAD and CADMIUM by
12 DRIED SEAWEED SLICE as mentioned herein.

13 36. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
14 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
15 violations alleged herein will continue to occur into the future.

16 37. Based on the allegations herein, Defendants are liable for civil penalties of up to
17 \$2,500.00 per day per individual exposure to LEAD and CADMIUM from DRIED
18 SEAWEED SLICE, pursuant to Health and Safety Code Section 25249.7(b).

19 38. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
20 filing this Complaint.

21 SECOND CAUSE OF ACTION

22 (By CONSUMER ADVOCACY GROUP, INC. and against CALI FOODS, KIM
23 SENG, and DOES 11-20 for Violations of Proposition 65, The Safe Drinking Water
and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

24 Seaweed II

25 39. Plaintiff repeats and incorporates by reference paragraphs 1 through 38 of this complaint
26 as though fully set forth herein.

27 40. Each of the Defendants are, and at all times mentioned herein was, a manufacturer,
28 distributor, promoter, or retailer of Dried Seaweed, which includes "Double Parrot; Dried

1 Seaweed; UPC 610232007397; Product of China; Net WT: 1.40oz (40g)” (“DRIED
2 SEAWEED”).

3 41. DRIED SEAWEED contains LEAD and CADMIUM.

4 42. Defendants knew or should have known that LEAD and CADMIUM has been identified
5 by the State of California as a chemical known to cause cancer and reproductive toxicity
6 and therefore was subject to Proposition 65 warning requirements. Defendants were also
7 informed of the presence of LEAD and CADMIUM in DRIED SEAWEED within
8 Plaintiff's notice of alleged violations further discussed above at Paragraph 22.

9 43. Plaintiff's allegations regarding DRIED SEAWEED concern “[c]onsumer products
10 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,
11 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
12 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §
13 25602(b). DRIED SEAWEED are consumer products, and, as mentioned herein,
14 exposures to LEAD and CADMIUM took place as a result of such normal and
15 foreseeable consumption and use.

16 44. Plaintiff is informed, believes, and thereon alleges that between July 2, 2016, and the
17 present, each of the Defendants knowingly and intentionally exposed California
18 consumers and users of DRIED SEAWEED, which Defendants manufactured,
19 distributed, or sold as mentioned above, to LEAD and CADMIUM, without first
20 providing any type of clear and reasonable warning of such to the exposed persons before
21 the time of exposure. Defendants have distributed and sold DRIED SEAWEED in
22 California. Defendants know and intend that California consumers will use and consume
23 DRIED SEAWEED, thereby exposing them to LEAD and CADMIUM. Defendants
24 thereby violated Proposition 65.

25 45. The principal routes of exposure are and were through ingestion, especially
26 direct(oral)ingestion, inhalation, and trans-dermal absorption. Persons sustain exposures
27 primarily by eating and consuming DRIED SEAWEED, and additionally by handling
28

1 DRIED SEAWEED without wearing gloves or any other personal protective equipment,
2 or by touching bare skin or mucous membranes with gloves after handling DRIED
3 SEAWEED, as well as through direct and indirect hand to mouth contact, hand to
4 mucous membrane, or even breathing in particulate matter dispersed from DRIED
5 SEAWEED.

6 46. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
7 Proposition 65 as to DRIED SEAWEED have been ongoing and continuous as
8 Defendants engaged and continue to engage in conduct which violates Health and Safety
9 Code Section 25249.6, including the manufacture, distribution, promotion, and sale of
10 DRIED SEAWEED, so that a separate and distinct violation of Proposition 65 occurred
11 each and every time a person was exposed to LEAD and CADMIUM by DRIED
12 SEAWEED as mentioned herein.

13 47. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
14 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
15 violations alleged herein will continue to occur into the future.

16 48. Based on the allegations herein, Defendants are liable for civil penalties of up to
17 \$2,500.00 per day per individual exposure to LEAD and CADMIUM from DRIED
18 SEAWEED, pursuant to Health and Safety Code Section 25249.7(b).

19 49. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
20 filing this Complaint.

21 **PRAYER FOR RELIEF**

22 Plaintiff demands against each of the Defendants as follows:

- 23 1. A permanent injunction mandating Proposition 65-compliant warnings;
24 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
25 3. Costs of suit;
26 4. Reasonable attorney fees and costs; and
27 5. Any further relief that the court may deem just and equitable.

1 Dated: October 18, 2019

YEROUSHALMI & YEROUSHALMI

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4 BY: 

Reuben Yeroushalmi
Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.